

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARK W. BROPHY,

Plaintiff,

1

JPMORGAN CHASE BANK
NATIONAL ASSOCIATION et al..

Defendants.

NO: 13-CV-0293-TOR

ORDER GRANTING PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL

BEFORE THE COURT is Plaintiff's Motion for Voluntary Dismissal

Pursuant to Rule 41(a)(2) (ECF No. 53). Defendants JPMorgan Chase, Bank of America, N.A., and LaSalle Bank National Association oppose any dismissal of the case without prejudice (ECF Nos. 55 & 58). The Court has reviewed the record and files herein and is fully informed.

DISCUSSION

Plaintiff filed a motion for voluntary dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) on May 28, 2014. ECF No. 53.

1 Defendants JPMorgan Chase, Bank of America, N.A., and LaSalle Bank National
2 Association, filed oppositions to the motion shortly thereafter. ECF Nos. 55 & 58.

3 Rule 41(a)(2) provides that an action may be dismissed at the plaintiff's
4 request "only by court order, on terms that the court considers proper." Fed. R.
5 Civ. P. 41(a)(2). Where dismissal is requested without prejudice, a court should
6 grant the motion "unless [the] defendant can establish that it will suffer some plain
7 legal prejudice as a result." *WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1059 n.6 (9th Cir. 2011) (quotation and citation omitted).
8 Plain legal prejudice in this context means "prejudice to some legal interest, [or]
9 some legal claim, [or] some legal argument." *Westlands Water Dist. v. United
10 States*, 100 F.3d 94, 97 (9th Cir. 1996). "Plain legal prejudice . . . does not result
11 simply when defendant faces the prospect of a second lawsuit or when plaintiff
12 merely gains some tactical advantage." *Hamilton v. Firestone Tire & Rubber Co.*,
13 679 F.2d 143, 145 (9th Cir. 1982). The Ninth Circuit has "explicitly stated that the
14 expense incurred in defending against a lawsuit does not amount to [plain] legal
15 prejudice." *Westlands*, 100 F.3d at 97 (citing *Hamilton*, 697 F.2d at 146).
16 "Although case law does not articulate a precise definition of 'legal prejudice,' the
17 cases focus on the rights and defenses available to a defendant in future litigation."
18 *Id.* at 97.

1 Having reviewed the entire record, the Court concludes that a dismissal
2 without prejudice is appropriate. The fact that Defendants have presumably
3 incurred expenses in defending this lawsuit and may be forced to defend against
4 similar claims in the future does not amount to “plain legal prejudice.” *Hamilton*,
5 679 F.2d at 145-46. The fact that a dismissal without prejudice will leave several
6 disputed issues unresolved is similarly insufficient. *Westlands Water Dist.*, 100
7 F.3d at 96. Finally, nothing that has occurred in this case to date will prejudice
8 Defendants’ ability to foreclose on Plaintiff’s property. Although Defendants
9 voluntarily ceased foreclosure efforts upon learning of this litigation, they were
10 under no legal obligation to do so.

11 The Court acknowledges that Defendants have an interest in prompt
12 resolution of the claims raised in this case given that Plaintiff has apparently not
13 been making his mortgage payments since 2011. But, like the pendency of this
14 lawsuit itself, a dismissal without prejudice does not preclude Defendants from
15 moving forward with foreclosure proceedings, whether judicial or non-judicial.
16 The bottom line is that Plaintiff has defaulted on his loan and is at risk of having
17 his property foreclosed upon. Unless and until a court declares otherwise,
18 Defendants are at liberty to pursue all rights they may have under the loan
19 agreement. But this case is not a foreclosure proceeding and therefore its dismissal
20 does not create plain legal prejudice to Defendants.

1 Plaintiff's motion for voluntary dismissal is granted. This case is dismissed
2 without prejudice and without an award of fees or costs to any party.

3 **IT IS HEREBY ORDERED:**

4 1. Plaintiff's Motion for Voluntary Dismissal (ECF No. 53) is **GRANTED**.

5 All claims and causes of action are hereby **DISMISSED** without
6 prejudice and without an award of fees or costs to any party.

7 2. All pending motions are **DENIED as moot**.

8 The District Court Executive is hereby directed to enter this Order, enter
9 Judgment accordingly, provide copies to counsel, and **CLOSE** the file.

10 **DATED** August 22, 2014.



11 A handwritten signature in blue ink that reads "Thomas O. Rice".
12 THOMAS O. RICE
13 United States District Judge